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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,476	06/04/2001	Dieter Blaschke	88265-4038	6732

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WINSTON & STRAWN  
PATENT DEPARTMENT  
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WASHINGTON, DC 20005-3502

EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/874,476

Applicant(s)

Blaschke et al.

Examiner

Lien Tran

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1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb. 11, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. Claims 1-19 and 21-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber in view of Moline and the brochure on "Gourmet Cookies" and the Pillsbury Best Cookies Cookbook.

The change in the rejection of claims 21-30 is necessitated by amendment to claim 21.

2. In the response filed Feb. 11, 2003, applicant traverses the rejection. Applicant argues Weber fails to mention any form, shape or configuration for retaining this dough in a refrigerated state. Applicant states the only shape that can be deduced from the Weber's disclosure is a "rope" product configuration due to its discussion of prior art and the commercially available product of the Pillsbury Company which is the assignee of the Weber product. This argument is not persuasive. It is true that there are commercially available refrigerated cooking doughs that come in the shape of a rope. However, such shape is not necessarily applicable to the Weber product. The rejection is predicated on what would have been suggestive to one skilled in the art taken together with the disclosure of other prior art. The Weber product is a refrigerated cookie dough containing edible bits such as candy coated chocolates. When making such cookie dough, it is impractical to form the dough into a rope like the Pillsbury Holiday Cookies because the bits will not be contained in the dough when having such configuration. In fact, the brochure of the Holiday Cookies teaches to decorate the dough with a variety of mini candy pieces by sprinkling the candies onto the pieces before baking; the candies are not incorporated into the dough during the making of the dough. The cookie dough in Weber is like the cookie product disclosed in the Gourmet Cookie; thus, it would have been obvious to one skilled in the art to make the dough in

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the form of the block as in the Gourmet Cookies so that the edible bits are contained in the dough and visible as the surface of the cookie. Also, the forming of the dough in the form of the block as in the Gourmet Cookie makes it easier to form uniform pieces.

With respect to the Moline reference, applicant argues Moline is non-analogous art because a frozen pizza dough is different from a refrigerated cookie or sweet dough. The Moline reference was relied upon for the teaching of providing score lines on a dough so that separable pieces can be obtained. The provision of the score lines is not affected by the composition of the dough or the storage condition of the dough. As shown by the Gourmet Cookie, cookie dough or sweet dough can be cut. If the dough can be cut all the way through the thickness, then it can be cut partially through the thickness. The provision of the score lines as taught in Moline provides the advantage that the dough pieces state intact, yet can be easily separated when needed. Applicant further argues none of the score lines of Moline intersect to define pieces to be separated and baked. Whether the lines intersect or not depend on the configuration of the dough. If the dough is not divided in half, the lines will intersect. It would have been obvious to make the lines intersect as well as not intersect. If a rectangular block such as the one shown in the Gourmet Cookie is provided with score lines, the lines will intersect to define pieces to be separated and baked. Applicant states Moline instructs not to separate the pieces unless the dough is frozen. It is not clear where Moline discloses this. However, the gist of Moline teaching is the versatility of baking individual pieces instead of baking the entire pizza. If wants to form a dough product in which individual pieces can be baked at a single time instead of

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an entire product, it would have been obvious to provide the dough with the score lines taught by Moline. The provision of the score lines is not affected by the type of dough or the condition of storage.

With respect to the brochure of Gourmet Cookie, applicant argues the product is totally cut. It is true that the product in the Gourmet Cookie is totally cut. However, what the reference show is that cookie dough can be precut to enable one to bake individual pieces at a time. If the dough can be cut totally through, then it is obvious it can be cut partially through. As stated above, it would have been obvious to provide the cookie dough with the score lines as taught by Moline to obtain the same objective as the Gourmet Cookie with the added benefit that the pieces stay together to facilitate handling. Applicant further argues the product in the Gourmet Cookie is frozen. The freezing or refrigerating of the product is predicate upon the length of storage and is not affected by the cutting or the composition of the product. As shown by Pillsbury cookbook, cookie dough can be refrigerated or frozen depending on the period of storage. Applicant discloses in the specification, the dough can be refrigerated or frozen. The cookbook teaches for longer storage, the dough can be placed in freezer bags and held in the freeze for up to six weeks. Applicant argues this does not teach how to prepare a refrigerated dough that includes separable dough portions. This argument is not persuasive because the cookbook teaches the same dough that is refrigerated can be frozen; there is no change in the making of the dough when it is subjected to freezing. As to providing separable dough portions, the cookbook is not relied upon for such teaching. Applicant further argues this teaching does not suggest to one to take a

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frozen dough and store it in the refrigerator for a shorter time prior to use. What the book teaches is that once a dough is made, one can decide to refrigerate the dough or to freeze the dough depending on the time of usage. If the dough will be used in a short time, it would have been obvious to put it in the refrigerator; if the dough will not be used in a short time, it would have been obvious to freeze it. Furthermore, both frozen and refrigerated cookie dough are well known in the art as shown by Weber and the brochure on Gourmet Cookie. As stated above, the cutting of the product to provide separable pieces is not affected by the storage condition. It would have been obvious to provide a dough product with cutting line if one wants to obtain individual pieces at the time of baking, regardless of whether the dough is frozen or refrigerated.

3. Applicant's arguments filed Feb. 11, 2003 have been fully considered but they are not persuasive.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

May 1, 2003

*Lien Tran*  
*Group 1700*